

Glenda Wiles

From: MACO Information [macopb@maco.cog.mt.us]
Sent: Friday, August 03, 2007 10:06 AM
Subject: FW: Fire Restrictions Memo

RECEIVED**AUG 03 2007****Ravalli County Commissioners**

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MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

to: Harold Blattie, Montana Association of counties
from: Mary Sexton, DNRC Director
subject: Clarification on fire restrictions
date: 8/2/2007

As we head into August and, historically, the most intense month for wildfires in Montana, most of the counties in the state are in fire restrictions. This memo is to provide some clarification about restrictions, the restrictions process, and how exemptions work as well.

The Northern Rockies Coordinating Group has developed the Restrictions & Closures Plan and implementation process for the region. They've identified the 2 stages for restrictions, clarified what each means, and offered definitions and guidance on implementation of restrictions. A copy of the plan can be downloaded at <http://www.mt.blm.gov/fire/restrictions/restrictionclosuresplan.pdf>. Each partner at the NRCG has agreed to use the standard language developed for Stage 1 & 2 restrictions, but each has the freedom to allow certain activities through an exemption or permit process, which is also explained in the plan.

Montana is divided into several multi-county, multi-jurisdiction restriction areas. Each area has a committee made up of all of the stakeholders with an interest in the restrictions process including, but not limited to, county commissioners, public land management agencies, local law enforcement, and planning officials. An area restrictions coordinator is responsible for convening the group to discuss and make decisions related to restrictions. The committee will meet as frequently as weekly, but some less often depending on how dry it is and how dynamic the fire situation becomes. When the committee meets, they decide whether or not to implement fire restrictions, and ideally, they arrive at a consensus decision where everyone opts to go into restrictions or not to go in. If a decision is made to implement restrictions, an information officer (also a member of the committee) takes responsibility for getting the word out to the public and the media as when the restrictions will be in effect. I'm sure many of you have participated in this process before.

The 2007 Legislature passed Senate Bill 147, which clarified that counties do have the authority to impose fire restrictions, stating that:

"A board of county commissioners may designate areas on private land or on land that is no under the jurisdiction of a municipality or a state or federal agency as high fire hazard areas. [and] in designated high fire hazard areas, the board may require all persons, firms, or corporations present or engaged in any activity in those areas to cease operations or activities or to adjust working hours to less critical periods of the day."

This is, in effect what the public land agencies are doing when they implement fire restrictions on public lands. As you work within your local fire restrictions coordinating committees, I ask that, as county government, you employ the same standard language that the agencies use, which is found in the NRCG Restrictions Plan referenced above. In doing so, it will ensure that all jurisdictional agencies are standardized in their approach, which will minimize confusion for the public and make enforcement across all ownerships easier.

With regard to Stage 2 restrictions, which limit some industrial operations among other things, there are instances when certain activities otherwise prohibited or limited under fire restrictions must still occur in the interest of public safety. Emergency powerline or railroad maintenance are two such examples. The NRCG plan anticipated this as well, and provides a standard exemption for both utilities and for railroads, citing safety contingencies which must be met and requiring notification when working in an area that is under fire restriction. So, when agencies implement Stage 2 Fire Restrictions, they authorize the standard exemptions for railroads and utilities as a matter of course. Again, the benefit here is that we all use the same language, this eliminating inconsistencies and confusion for the public and for industrial operators.

At the county level, you may find it necessary to exempt or permit additional activities as well. It's important to understand the difference between an exemption and a permit. An exemption is defined as authorization for an otherwise prohibited act. For example, you may enact Stage 2 fire restrictions, but provide an exemption (with provisions) for agricultural operations to enable farmers to harvest their crops. The final page of this memo has an example of an exemption for agricultural activities.

A permit, on the other hand, is a written authorization for an otherwise prohibited act, and generally thought of as a 'one time' or special circumstance. For example, you might write a permit for an outfitter to drive an ATV off a designated road in order to retrieve supplies from a camp that's threatened by a fire. In this case, you may want to proceed as the DNRC does by providing written permission on official letterhead with appropriate authorization and dates for which permission is granted. A word of caution on exemptions and permits – they can create a significant workload, so make them the exception, not the rule.

Lastly, once the conditions change and the fire risk is reduced, the restrictions committees repeat the process for implementing restrictions to rescind them. Everyone agrees on the date and time, a rescission document is created, and the public and media are informed of the changes.

The fire restrictions process isn't perfect; it's a work in progress, and we find ways to improve upon our process every year. I hope you will take the opportunity to review the NRCG Restrictions Plan, participate in your Restrictions Area Committee, and use the standard language that the agencies use when deciding to implement restrictions on private lands within your county.

If you have questions concerning the restrictions process, contact your local Restrictions

Coordinator (contact information is available at):

<http://www.mt.blm.gov/fire/restrictions/index.html>

Or call Paula Rosenthal, Montana DNRC Fire & Aviation Management, 406-542-4235.

Sample Exemptions For Various Activities:

Operations for the following classes of activities and industries that require travel off designated roads, or operating equipment powered by an internal combustion engine or other activities are allowed, as long as the mitigation measures described below are met.

- a. Farming and ranching operations, including:
 - agricultural harvest, planting, and tilling;
 - care of livestock (feeding, tending, watering or moving);
 - routine fence and other maintenance.
- b. Utilities, communications and cable television operations, including:
 - emergency repairs;
 - routine maintenance of distribution lines, transmission lines and rights-of-way.
- c. Oil and gas operations
 - emergency repairs;
 - routine maintenance and operations.
- d. Open cut mining (sand and gravel) and mine rehab operations
 - emergency repairs;
 - routine maintenance and operations.

Operations that are not covered under an exemption listed above may be granted an individual exemption permit by the agency having jurisdiction on a case by case basis. All new construction occurring outside of a developed area requires an individual exemption permit.

Required Mitigation Measures:

1. All vehicles operating under these exemptions must have:
 - a sound, functional exhaust system and/or spark arrestor;
 - a fire extinguisher, minimum class 4BC rating and 2½ pounds;
 - at least 4 gallons of water available, with a minimum of a two-gallon container capable of being pressurized with a hand pump, or one five-gallon backpack pump;
 - one fire fighting tool per person (#0 shovel or Pulaski).
2. All equipment powered by an internal combustion engine must be equipped with a spark arrestor. A patrol is required at the worksite for one hour following cessation of all work.
3. All surface blasting, welding and grinding will occur only between 1:00 a.m. and 1:00 p.m.

Additional requirements include:

- a spark shield surrounding the entire area;
 - a patrol is required at the worksite for one hour following cessation of all work.
4. For any work involving welding, blasting or grinding, or equipment powered by an internal combustion engine, the following fire fighting equipment, at a minimum, must be present on site at all times:
- at least 4 gallons of water available, with a minimum of a two-gallon container capable of being pressurized with a hand pump, or one five-gallon backpack pump
 - one fire fighting tool per person (#0 shovel or Pulaski)

Recommended Mitigation Measures:

1. When practical, all activities covered under these exemptions should be limited to the hours between 1:00 a.m. and 1:00 p.m.
2. For agricultural harvest, the following is recommended to be at the worksite at all times:
 - a truck or trailer with 100-gallon capacity water tank and 10 gpm pump with hose;
 - a tractor with tillage equipment attached for emergency line construction.